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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/800,358

03/12/2004

Edward George Callway

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EXAMINER

BOCCIO, VINCENT F

ART UNIT

PAPER NUMBER

2165

MAIL DATE

DELIVERY MODE

06/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/800,358	Applicant(s) CALLWAY ET AL.	
	Examiner //Vincent F. Boccio//	Art Unit 2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amend. & Resp. of 30 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9 and 11-14 is/are allowed.
- 6) ☒ Claim(s) 10 and 16-22 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 2165.

Response to Arguments

1. Applicant's arguments filed 4/30/2008 have been fully considered but they are not persuasive.

{A} In re page 11, applicant states, "... cited operation of the digitalizing operation performed by A/D 54 is different from the claimed ... col. 8, there is no digitizing by this A/D 54 that removes a data access parameter in response to a digitizing operation" and there is no access parameter lost."

In response the examiner cannot agree. Applicant is deemed not proven that somehow the A to D of the prior art actually operates differently.

If applicant is correct, explain why the VBI decoder 51 (Fig. 8) is extracting from an analog signal?

Further, Kori as deemed by the examiner, did not teach that the Decoder 22 can operate on the video after the A to D or in other words extract by the decoder from a digital signal, but, is accomplished by the VBI decoder 51 on an analog video signal.

Applicant has not argued and provided associated proof that supports the position that, "there is no access parameter lost",

Art Unit: 2165

at the Video A to D converter 51 of Fig. 8 of, Kori (US 5,778,064).

Without this proof the examiner cannot agree.

It is noted that the circuit in Fig. 8 is different from applicant's circuit in that, the position of the A-D is different, such that, the video seems to be always converted to digital based on applicants Fig. 1, element 16, Video Decoder, since the signal is split prior to the processing elements 20 and 22 the graphics controller, is related to Kori in the function is the same, providing an indication of copy protection to the next processing element.

Further another embodiment of applicant is shown in Fig. 4, video decoder 16, wherein now the digitizer 22 seems to generate the ALT signal.

Upon a detailed video decoder elements and specifics to elements in applicants Figs. 1, 4, the examiner may be persuaded to determine a distinctive claimed subject matter of the newly presented claims, from the ones previously allowed.

{B} In re page 12, applicant requests factual support for official notice taken that what has been done in hardware is obvious to be implemented by a computer system with CPU and software to perform the same.

Art Unit: 2165

The examiner cites a supporting reference below

US-PAT-NO: 4593384

TITLE: Security device for the secure storage of sensitive data

APPL-NO: 06/684637

DATE FILED: December 21, 1984

Cited Passage:

Detailed Description Text - DETX (35):

The EX-OR gates 93 and 95, the data encryption device 97 and the data decryption device 99 can be implemented in hardware or the operations performed by those units can be performed as a function of software subroutines of the program contained in the PROM 75.

US-PAT-NO: 4531228

TITLE: Speech recognition system for an automotive vehicle

Detailed Description Text - DETX (44):

FIG. 9 shows a fourth embodiment of a voice detecting means of the speech recognition system according to the present invention. In this embodiment, the level detector 31, the threshold calculator 32, the start comparator 33, the timer unit 34, the OR gate 35, the memory unit 36, the threshold corrector 37 and the end comparator 38 described in the third embodiment shown in FIG. 8 are all incorporated within a microcomputer 200 provided with an analog-to-digital converter, a central processing unit, a read-only memory, a random-access memory, and input/output interfaces, etc. That is to say, some of the functions of the voice detecting means are implemented via arithmetic operations executed in accordance with appropriate software, in place of hardware.

Based on the above references the examiner renders a software implementation obvious to replace any hardware elements as is deemed obvious to those skilled in the art.

The examiner deems has covered the arguments presented and if a interview is deemed helpful call the primary of record to resolve any issues.

Claim Objections

2. Claim 15 is objected to because of the following informalities:

3. Claim 15, is objected to in view of the limitation line 9, fails to have proper antecedent bases
Appropriate correction is required.

Specification

The specification is objected to in view of for example claim 10, which relates claim limitations, "storage medium and programming and/or programming instructions", the specification does not define these elements in one sentence and tie the elements together, therefore, the current specification fails to show proper antecede based in view of the claims.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 10 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 10, directed to a medium that stores programming instructions the claim is directed to software per se, where the specification fails to define that the medium is only within the realm of Statutory Type Media.

Upon extrinsic evidence (prior art and/or IEEE), the computer readable medium can be interpreted as a signal representing the medium.

The examiner suggests arguments defining the scope of the medium, upon the specification not defining to be clear to exclude signal type of the medium.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claim 22 is rejected under 35 U.S.C. 102(e) as being anticipated by Kori et al. (US 5,778,064).

Regarding claim 22, Kori in Fig. 8, discloses and meets the limitations associated with a method comprising:

- processing receiving data including content protection coding signifying a first level (table Fig. 2 B, bits 11 and/or 10, two levels) of content protection, in a data processing system (see Fig. 8, "VBI dec. 51", "A/D 54", "A/D 52", "video signal process 55", "audio signal process 53" etc.);

Art Unit: 2165

- independently (processing Independently, processing element AGC 49, Fig. 8 is independent of the access parameter and meets the limitation as recited) of the content protection coding in the received data, imposing on the processing system a requirement for receiving data to be subject to a second level (Table Fig. 2 B, bits 11 and/or 10, two levels) of content protection; selecting one of the first and second levels of content protection and restricting access of the received data based on the selected level of content protection (Fig. 2 B, two protective levels One is Invalid for Copy and a second of One Copy, ONLY, a third operation Not copy Protected Valid for Copy Operation or not protected at all).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kori et al. (US 5,778,064).

Art Unit: 2165

Regarding claims 16-18, Kori in Fig. 8, discloses and meets the limitations associated with a method for computing system to provide protection of incoming data, the method comprising:

- receiving data of at least one of audio and video; (see Fig. 8, "VBI dec. 51", "A/D 54", "A/D 52", "video signal process 55", "audio signal process 53" etc.);
- wherein a line of the data includes screen end information, and color burst information (the color burst and screen end information are inherent features of a beginning and ending information associated with one line of a video signal, from H-sync to H-sync.; and
- a data access parameter is independent of a source of the data (see col. 7, line 4 to col. 8, line 43, "CGMS information indicates the level of protection, either "bit value 00, not copy protected", "bit value 10 partially copy protected" and "bit value 11 copy protected");
- digitizing (54) independent of the access parameter, once digitized, the data access parameter is lost, prior to enabling a central processing unit (control switches 48, 50 and SW and elements 45, 56, with controllers 42, 43 and 51), to control access to the digital video (to recorder 13);
- prior to enabling a processing unit to access control of the digital video to be recorded, determining whether the data access parameter restricts (Fig. 2 B); and when restricted access is preventing to the digital video without restrictions (Fig. 2 B, invalid for copy operation, bits 7 & 8 are 1/ones s).

Claims 19-21 are deemed analyzed and discussed with respect to the claims above.

Furthermore, Kori further is deemed to meet the limitations of wherein when storing the video in digital memory an embedded data access parameter (Fig. 2 B, "valid for one copy generation") is not included (lost due to D/A conversion, also the original in this case is not included because it is

Art Unit: 2165

changed to no copy) and preventing from access due to copy restriction (see arguments Supra).

Further regarding claims above, **Kori** discloses a various processors for controlling switches and related elements and interpreting restrictions but, fails to disclose a CPU and computer system.

The examiner takes official notice that what has been done in hardware is obvious to be implemented by a computer system with CPU and software to perform the same, therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Kori by utilizing or replacing the hardware processors with a CPU/computer system and software, as software lends itself to be updated and re-down-loaded, as compared to hardware modifications, as is obvious to those skilled in the art.

Allowable Subject Matter

1. Claims 1-9 and 11-14 allowed, based on the reasons of record in application 08/878,249 and current arguments.
2. Claims 15 would be allowable if rewritten or amended to overcome the objection set fourth Supra.

Contact Information

Any inquiry concerning this communication or earlier communications should be directed to the examiner of record Vincent F. Boccio whose telephone number is (571) 272-7373.

The examiner can normally be reached on between Monday thru Friday between (7:30 am to 5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christian Chace can be reached on (571) 272-4190.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Art Unit: 2165

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

//Vincent F. Boccio//

Primary Examiner, Art Unit 2165

6/21/2008